

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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CC:CORP:B03

PLR-108902-09

Date:

March 30, 2009

Legend

Former Parent =

New Parent =

Sub 1 =

Sub 2 =

Date A =

Date B =

Date C =

Tax Professional =

Company Official =

Dear

This letter responds to a letter dated February 17, 2009 submitted on behalf of New Parent, requesting an extension of time under §301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for New Parent, Sub 1, and Sub 2 to make an election to file a consolidated Federal income tax return, with New Parent as the common parent, under §1.1502-75(a)(1) ("the Election"), effective for the taxable year beginning on Date B and ending on Date C ("the short year").

Former Parent, a holding company, was the common parent of an affiliated group that filed a consolidated Federal income tax return, with Former Parent directly owning at least 80% of the outstanding common stock of New Parent, also a holding company. New Parent in turn, owed and continues to own, all of the outstanding common stock of Sub 1 and Sub 2. Sub 1 was and continues to be the only member of the group that engages in an active trade or business. On Date A, New Parent issued additional shares of common stock to individuals, and as a result, Former Parent's ownership of New Parent fell below the 80% required for affiliation. Thus, as of Date A, Former Parent was no longer permitted to file a consolidated return with New Parent, Sub 1 and Sub 2.

An election under §1.1502-75(a)(1) for the New Parent affiliated group to file a consolidated return for the short year was required to be filed by the due date of New Parent's return (including extensions), but for various reasons the Election was not timely filed. The statute of limitations on assessment under §6501(a) has not run for New Parent's, Sub 1's or Sub 2's taxable year for which they want to make the Election or for any taxable year that would be affected by the Election had it been timely filed.

Section 1.1502-75(a)(1) provides that a group which did not file a consolidated return for the immediately preceding tax year may file a consolidated return in lieu of separate returns for the tax year, provided that each corporation which has been a member of the group during any part of the of the tax year for which the consolidated return is to be filed consents to the regulations under §1502. If a group wishes to exercise its privilege of filing a consolidated return, such consolidated return must be filed not later than the last day prescribed by law (including extensions of time) for filing the common parent's return.

Under §301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making

regulatory elections that do not meet the requirements of §301.9100-2. Requests for relief under §301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

In this case, the time for filing the election is fixed by the regulations (i.e., §1.1502-75(a)(1)). Therefore, the Commissioner has discretionary authority under §301.9100-3 to grant an extension of time for New Parent to file the Election, provided New Parent establishes it acted reasonably and in good faith, the requirements of §§301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Company Official and Tax Professional explain the circumstances that resulted in the failure to timely file valid Election. The information establishes that New Parent reasonably relied on a qualified tax professional who failed to make, or advise New Parent to make, the Election, and that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See §§301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations that have been made, we conclude that New Parent has established it acted reasonably and in good faith in failing to timely file the Election, the requirements of §§301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, we grant an extension of time under §301.9100-3, until 60 days from the date on this letter, for New Parent and its includible subsidiaries to file the Election (by filing a consolidated return, with New Parent as the common parent, and attaching a Form 1122 for each of the includible subsidiaries) for the taxable year ended Date C.

The above extension of time is conditioned on New Parent's, Sub 1's, and Sub 2's tax liability, if any, not being lower, in the aggregate for all years to which the Election applies, than it would have been if the Election had been made timely (taking into account the time value of money). No opinion is expressed as to New Parent's, Sub 1's, or Sub 2's tax liability for the years involved. A determination thereof will be made upon audit of the Federal income tax returns involved. Further, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that the tax liability is lower. Section 301.9100-3(c).

We express no opinion as to the tax effects or consequences of filing the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Election late that are not specifically set forth in the above ruling. Specifically, we express no opinion with respect to whether New Parent, Sub 1, and Sub 2 qualify substantively to file a consolidated return.

For purposes of granting relief under §301.9100-3, we relied on certain statements and representations made by the taxpayer, Company Official, and Tax Professional under penalties of perjury. However, all of the essential facts must be verified. In addition, notwithstanding that an extension is granted under §301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Ken Cohen
Acting Chief, Branch 3
Office of Associate Chief Counsel (Corporate)

cc: